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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable William Alsup, Judge

JEREMY STANFIELD, on behalf of )	
himself and all others )	
similarly situated, )	
) )	
Plaintiff, )	
) )	
VS.                        ) NO. C 20-07000-WHA	
) )	
TAWKIFY, INC.,          ) )	
) )	
Defendant.              ) )	
) )	

San Francisco, California  
Thursday, March 25, 2021

TRANSCRIPT OF REMOTE TELECONFERENCE PROCEEDINGS

APPEARANCES: (Appearances via AT&T Teleconference.)

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(APPEARANCES CONTINUED ON FOLLOWING PAGE)

Reported By: Ruth Levine Ekhaus, RMR, RDR, FCRR  
Official Reporter, CSR No. 12219

1 present all the material that is pertinent to that treated as  
2 summary judgment.

3 Then Rule 56, which is the second part of the one-two  
4 punch, similarly says that the opponent gets an opportunity  
5 to -- being the plaintiff here -- to take discovery to meet the  
6 issues that are presented by the motion.

7 Now, here, Tawkify does seek to rely upon extrinsic  
8 evidence outside the four corners of the complaint and relies  
9 on policies and accounting records, and Stanfield will not  
10 stipulate to their authenticity. It's just going too far  
11 outside the four corners of the complaint to make me feel  
12 comfortable throwing a cause out on Rule 12.

13 I do think there is a question here about standing, but  
14 I'm not willing to rule on it on this record.

15 And I think if I did, the Court of Appeals would say I  
16 acted too hastily. And I want there to be a full  
17 opportunity -- you don't have to take the opportunity, but  
18 there will be a full opportunity for both sides to take the  
19 depositions of everyone who has anything to do with these two  
20 dates, anyone who had anything to do with setting up the two  
21 dates, anyone that had anything to do with getting this account  
22 to begin with, including whether Mr. Stanfield knew good and  
23 well that he had the rights under the statute or not, what he  
24 knew about that, when he first learned about his ability to get  
25 a refund, and so forth.

1           So I'm going to let you take those depositions and to  
2 get -- and to get document discovery from each other on that,  
3 on those questions. However, classwide discovery will not be  
4 allowed at this point.

5           I usually do allow classwide discovery at this point, but  
6 I think in this case, there is enough of a standing question  
7 that it's premature, and we should limit the case to discovery  
8 for the moment to what happened with Mr. Stanfield and his  
9 dealings with the company and particular dates and so forth.

10          So I'm not going to grant or deny these motions. I'm  
11 going to hold the motion to dismiss in abeyance, treat it as a  
12 motion for summary judgment, and give each side an opportunity  
13 to take discovery and file supplemental briefs.

14          So I suggest that about two months would be enough time,  
15 but if you want a little bit more than that, I would be willing  
16 to give you more time to take the discovery.

17          So let me hear first from the defendant. How much time do  
18 you think you need to take discovery and to give discovery?

19          **MR. GRAHAM:** Thank you, Your Honor.

20          I defer to the Court. I'm happy to meet and confer with  
21 plaintiffs, if the Court would allow us. Otherwise, I would  
22 say 90 days as opposed to 60 days. But I'm happy to meet and  
23 confer with plaintiffs to come to an agreement on both sides  
24 with the Court's approval.

25          **THE COURT:** I'm willing to do 90 days. I can see all

**PROCEEDINGS**

1 important to me to see if it's the plaintiff or the defendant,  
2 or maybe in a rare case they are both being angels. So that's  
3 the way I'll deal with that one.

4 Now, your first question was about one-way intervention.  
5 I'm not going to solve that problem for you. If I throw your  
6 case out before class certification, I throw your case out  
7 before class certification, and there is no problem on one-way  
8 intervention. One-way intervention problem, I can't let that  
9 guide the way I handle a case.

10 So to me, the practical -- I think there is a 50/50 chance  
11 this case will get thrown out on summary judgment. That's  
12 not -- that's just 50-50. It could go either way. But I'm  
13 going to go down the path of evaluating that, and if the answer  
14 is yes, I throw it out, then that's the way it is. The judge  
15 threw it out, and maybe I'll get reversed on appeal.

16 So there. That's the best I can do on your question.

17 All right. Does the defense have any questions?

18 **MR. GRAHAM:** No, Your Honor.

19 **THE COURT:** All right. That's what the schedule is  
20 going to be.

21 I want to say one other thing to the defendant.

22 If you went back and looked at the number of times -- I  
23 think I've got a pretty good track record in the Court of  
24 Appeals, at least just average.

25 If you went back and looked at the number of cases, the

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2                   CERTIFICATE OF REPORTER  
3

4                   I certify that the foregoing is a correct transcript  
5 from the record of proceedings in the above-entitled matter.  
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8                   DATE: Saturday, March 27, 2021  
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13                   Ruth Levine Ekhaus, RMR, RDR, FCRR, CSR No. 12219  
14                   Official Reporter, U.S. District Court  
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